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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,298	10/09/2001	John W. Polley	963 P 001	5996

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EXAMINER	
SIMONE, CATHERINE A	

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,298	POLLEY, JOHN W.	
	Examiner	Art Unit	
	Catherine Simone	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5-21,30 and 31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5-21,30 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 102 rejection of claims 1-3 and 30 as being anticipated by Kolsky of record in the Office Action mailed 10/20/03, Pages 3-4, Paragraph #9 has been withdrawn due to the Applicant's amendment filed 3/24/04.

2. The 35 U.S.C. 103 rejection of claims 4 and 5 over Kolsky of record in the Office Action mailed 10/20/03, Pages 4-5, Paragraph #11 has been withdrawn due to the Applicant's amendment filed 3/24/04.

3. The 35 U.S.C. 103 rejection of claims 6-12 over Kolsky in view of Small of record in the Office Action mailed 10/20/03, Pages 5-7, Paragraph #12 has been withdrawn due to the Applicant's amendment filed 3/24/04.

4. The 35 U.S.C. 103 rejection of claims 13-16 over Kolsky of record in the Office Action mailed 10/20/03, Pages 7-8, Paragraph #13 has been withdrawn due to the Applicant's amendment filed 3/24/04.

5. The 35 U.S.C. 103 rejection of claims 17-21 over Kolsky in view of Small of record in the Office Action mailed 10/20/03, Pages 8-9, Paragraph #14 has been withdrawn due to the Applicant's amendment filed 3/24/04.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. **Claims 1, 5, 30** and **31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642).

Regarding claims 1, 5, 30 and 31, Kolsky discloses a mat comprising at least two layers of an air bubble shaped closed cellular material having a flat side and a bubble side (Fig. 11, #102 and #104; also see col. 6, lines 35-38) and one or more layers selected from the group of materials consisting of closed cellular polyethylene foam and closed cellular polypropylene foam materials (Fig. 1, #10 and #14; also see col. 4, lines 30-41). However, Kolsky fails to disclose the bubble side of one of the layers of air bubble shaped closed cellular material being positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material and the foam layer being interposed between the layers of air bubble shaped closed cellular material. Herman teaches that it is old and well-known in the art to have two layers of air bubble shaped closed cellular material wherein the bubble side of one of the layers of air bubble shaped closed cellular material is positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material (Fig. 2, #1) and further teaches a foam material (Fig. 2, #4) being interposed between the layers of air bubble shaped closed cellular material for the purpose of providing suitable resistance to compression to provide proper cushion while in use and extreme resistance to bottoming-out and the ability to conform to shape with use in order to provide effective and long term relief. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the one or more foam layers and the two layers of air bubble shaped closed cellular material in Kolsky so that the

bubble side of one of the layers of air bubble shaped closed cellular material is positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material and the foam layer is interposed between the layers of air bubble shaped closed cellular material as suggested by Herman in order to provide the mat with suitable resistance to compression to provide proper cushion while in use and extreme resistance to bottoming-out and the ability to conform to shape with use in order to provide effective and long term relief.

8. **Claims 6-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642) and in view of Small (4,644,592).

Regarding claims 6-8, Kolsky further fails to disclose a base layer including a low-tack adhesive bottom surface and further a removable liner releasably attached to the lower surface of the low-tack adhesive. Small teaches that it is old and well-known in the art to have a mat with a low-tack adhesive on the bottom surface (Fig. 1, #16) and a removable liner (Fig. 1, #18) releasably attached to the lower surface of the low-tack adhesive for the purpose of being able to secure the mat to a surface without allowing the mat to slip or move relative to the surface while in use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modified the base layer of the mat in Kolsky to include a low-tack adhesive bottom surface and a removable liner releasably attached to the lower surface of the low-tack adhesive as suggested by Small in order to secure the mat to a surface without allowing the mat to slip or move relative to the surface while in use.

9. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642) and in view of Small (4,644,592) and in view of Taylor (5,028,468).

Regarding claims 9 and 10, Kolsky discloses a mat further comprising a cover layer of closed cellular polypropylene foam material (Fig. 1, #10; also see col. 4, lines 30-38) and further discloses a laminating adhesive between the layers to adhere the layers together (Fig. 1, #12 and #16 and Fig. 3, #38 and #40). However, Kolsky fails to disclose the cover layer of closed cellular polypropylene foam material being anti-static. Taylor teaches that it is old and well-known in the art to have a mat including anti-static additives (see col. 1, lines 12-16) for the purpose of providing the mat with the ability to be employed in areas containing sensitive electronic equipment and to prevent the accumulation of static charges in medical environments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the foam layer in Kolsky to be anti-static as suggested by Taylor in order for the mat to be employed in areas containing sensitive electronic equipment and to prevent the accumulation of static charges in medical environments.

Regarding claim 11, Kolsky further fails to disclose the bubble layers and the polyethylene foam layer being dimensioned to provide the mat with a truncated pyramidal shape. Normally, it is to be expected that a change in shape would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. MPEP 2144.04 IV (B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the dimensions of the bubble layers and the foam layers in Kolsky to provide the mat with a truncated pyramidal shape. One skilled in the art would have been motivated to do so in order to form a mat, since it has been held that the change

in form or shape of the bubble layers and foam layers would be an unpatentable modification in absence of showing unexpected results.

10. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642) and in view of Small (4,644,592) and in view of Tricca et al. (4,574,101).

Regarding claim 12, Kolsky further fails to disclose the bubble shaped material having less than a 10% thickness loss based on a 0.5 pounds per square inch loading over 15 days utilizing a static test method of 10" x 10" material samples, the closed cellular polyethylene foam material having a density of at least about 1.7 pounds per cubic foot and the polypropylene closed foam material having a density of at least about 0.5 pounds per cubic feet. Tricca et al. teaches that it is old and well-known in the art to have a mat composed of a closed cellular polyethylene foam having a density of 2.5 pounds per cubic foot (see col. 2, lines 34-36) for the purpose of providing excellent shock absorbing characteristics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the closed cellular foam layer in Kolsky to consist of closed cellular polyethylene foam having a density of 2.5 pounds per cubic foot as suggested by Tricca et al. in order to provide the mat with excellent shock absorbing characteristics.

11. **Claims 2** and **13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642) and in view of Taylor (5,028,468).

Regarding claims 2 and 13-16, Kolsky discloses a mat comprising a first and third layer each composed of an air bubble shaped closed cellular material having a flat side and a bubble side (see col. 6, lines 35-38) and a second layer of closed cellular polyethylene foam and a fourth

layer of closed cellular polypropylene foam (Fig. 1, #10 and #14 and Fig. 3, #34 and #36; also see col. 4, lines 30-38) and further adhesive layers interposed between the foam layers and the layers of air bubble shaped closed cellular material (Fig. 1, #12 and #16 and Fig. 3, #38 and #40) to adhere each layer to the other. However, Kolsky fails to disclose the second layer of closed cellular polyethylene foam material interposed between the first and third layers of air bubble shaped closed cellular material and further the bubble side of the first layer facing the second layer and the bubble side of the third layer facing the second layer. Herman teaches that it is old and well-known in the art to have Herman teaches that it is old and well-known in the art to have two layers of air bubble shaped closed cellular material wherein the bubble side of one of the layers of air bubble shaped closed cellular material is positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material (Fig. 2, #1) and further teaches a foam material (Fig. 2, #4) being interposed between the layers of air bubble shaped closed cellular material for the purpose of providing suitable resistance to compression to provide proper cushion while in use and extreme resistance to bottoming-out and the ability to conform to shape with use in order to provide effective and long term relief. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the second layer of closed cellular polyethylene foam material and the first and third layers of air bubble shaped closed cellular material in Kolsky so that the bubble side of the first layer of air bubble shaped closed cellular material is positioned to face the bubble side of the third layer of air bubble shaped closed cellular material and the second foam layer is interposed between the first and third layers of air bubble shaped closed cellular material as suggested by Herman in order to provide the mat with suitable resistance to compression to provide proper

cushion while in use and extreme resistance to bottoming-out and the ability to conform to shape with use in order to provide effective and long term relief.

Furthermore, Kolsky fails to disclose the layers of air bubble shaped closed cellular material and the layer of the closed cellular polyethylene foam material and the layer of the closed cellular polypropylene foam material being anti-static. Taylor teaches that it is old and well-known in the art to have a mat including anti-static additives (see col. 1, lines 12-16) for the purpose of providing the mat with the ability to be employed in areas containing sensitive electronic equipment and to prevent the accumulation of static charges in medical environments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the closed cellular foam layers and the layers of air bubble shaped closed cellular material in Kolsky to be anti-static as suggested by Taylor in order for the mat to be employed in areas containing sensitive electronic equipment and to prevent the accumulation of static charges in medical environments.

12. **Claims 17-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolsky (5,274,846) in view of Herman (4,356,642) and in view of Taylor (5,028,468) and in view of Small (4,644,592).

Regarding claims 17-19, Kolsky further fails to disclose a low-tack adhesive layer under the first layer and further a removable liner releasably attached to the lower surface of the low-tack adhesive. Small teaches that it is old and well-known in the art to have a mat with a low-tack adhesive on the bottom surface (Fig. 1, #16) and a removable liner (Fig. 1, #18) releasably attached to the lower surface of the low-tack adhesive for the purpose of being able to secure the mat to a surface without allowing the mat to slip or move relative to the surface while in use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the mat in Kolsky with a low-tack adhesive layer under the first layer of air bubble shaped closed cellular material and a removable liner releasably attached to the lower surface of the low-tack adhesive as suggested by Small in order to secure the mat to a surface without allowing the mat to slip or move relative to the surface while in use.

Regarding claims 20 and 21, Kolsky also fails to disclose the length and width of the first layer being less than the respective length and width of the low-tack adhesive layer, the length and width of the second layer being less than the respective length and width of the first layer, the length and width of the third layer being less than the respective length and width of the second layer and the length and width of the fourth layer is equal to or greater than the respective length and width of the low-tack adhesive layer in order to provide the mat with a truncated pyramidal shape. Normally, it is to be expected that a change in shape would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. MPEP 2144.04 IV (B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the dimensions of the bubble layers and the foam layers in Kolsky to provide the mat with a truncated pyramidal shape. One skilled in the art would have been motivated to do so in order to form a mat, since it has been held that the change in form or shape of the bubble layers and foam layers would be an unpatentable modification in absence of showing unexpected results.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 2, 5-21, 30 and 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine Simone
Examiner
Art Unit 1772
January 14, 2005

1772

1/24/05